

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

JOE KLEON,

Plaintiff,

V.

DARK STAR RECORDS, and
JEFFREY SWANSON,

Defendant.

Civil Action No.:

COMPLAINT AND JURY DEMAND

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff, JOE KLEON (“Kleon” or “Plaintiff”), brings this complaint in the United States District Court for the Northern District of Ohio against DARK STAR RECORDS (“Dark Star”), and JEFFREY SWANSON (“Swanson”) (together “Defendants”), alleging as follows:

PARTIES

1. Plaintiff is an experienced, commercial photographer who has photographed more than 1,000 live concert performances during the past fifteen (15) years, including acts as Red Hot Chili Peppers, Blues Traveler, Bon Jovi, Patti Smith, Joan Baez, Def Leppard, Paul McCartney, Snoop Dogg, and Bad Company. Plaintiff resides in Cleveland, Ohio. Plaintiff's photographs have been published in hundreds of magazines and newspapers throughout the world.
2. On information and belief, Dark Star is a Limited Liability Corporation operating under the laws of the State of California, with headquarters in Concord, California. Dark Star is a

record label specializing in heavy metal music.¹ Dark Star owns, operates, and is solely responsible for the content displayed on the commercial website, www.darkstarrecords.com.

3. On information and belief, Swanson is the founder and President of Dark Star.

JURISDICTION AND VENUE

4. This is a civil action seeking damages for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 et seq.).
5. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).
6. This Court has personal jurisdiction over Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b) because the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Plaintiff resides in this district, and Defendant is subject to personal jurisdiction in this district.
7. This Court also has personal jurisdiction over Defendant, and venue in this District is proper under 28 U.S.C. § 1400(a).

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

8. Plaintiff captured the photograph, “trouble9” (“Copyrighted Photograph”), on May 7, 2005 at the Odeon Concert Club in Cleveland, Ohio. [Exhibit 1].
9. On or about May 9, 2005, Plaintiff posted Copyrighted Photograph to www.g4orce-studios.com/trouble.html [Exhibit 2].
10. Plaintiff attached “Photo by Joe Kleon, G4FORCE STUDIOS, www.g4orce-studios.com” to the bottom right of Copyrighted Photograph before posting as detailed above. [Exhibit 2].

¹ www.darkstarrecords.com

11. Beginning on or about January 26, 2010, Defendants copied and posted Copyrighted Photograph to the company's commercial website, www.darkstarrecords.com. Defendants used Copyrighted Photograph as a half-page image to accompany a post titled: "Blackfinger Signs With Dark Star Records." [Exhibit 3].
12. Defendants posted Copyrighted Photograph to the following URL:
 - www.darkstarrecords.com/news.html. [Exhibit 3].
13. Plaintiff registered Copyrighted Photograph with the United States Copyright Office on May 9, 2018 (Registration No.: VA 2-102-816). [Exhibit 4].

COUNT I: INFRINGEMENT OF COPYRIGHT PURSUANT TO 17 U.S.C. §101 ET SEQ.

14. Plaintiff incorporates herein by this reference each and every allegation contained in each paragraph above.
15. Plaintiff is, and at all relevant times has been, the copyright owner or licensees of exclusive rights under United States copyright with respect to Copyrighted Photograph, which is the subject of a valid Certificate of Copyright Registration issued by the Register of Copyrights.
16. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce and distribute Copyrighted Photograph to the public.
17. Plaintiff is informed and believes that Defendants, without the permission or consent of Plaintiff, used Copyrighted Photograph on Defendant's commercial website, www.darkstarrecords.com. In doing so, Defendants violated Plaintiff's exclusive rights of reproduction and distribution. Defendants' actions constitute infringement of Plaintiff's copyrights and exclusive rights under copyright.
18. Upon information and belief, Swanson is the dominant influence in Dark Star, and determined and/or directed the policies that led to the infringements complained of herein. Accordingly, Swanson is jointly and severally liable for direct copyright infringement. *See*

Broad. Music, Inc. v. It's Amore Corp., No. 3:08CV570, 2009 WL 1886038 (M.D. Pa. June 30, 2009), citing *Sailor Music v. Mai Kai of Concord, Inc.*, 640 F. Supp. 629, 634 (D.N.H.1984). Upon further information and belief, Swanson maintained the right and ability to control the infringing activities of Dark Star, and had a direct financial interest in those activities by virtue of his ownership in the company and the profits derived from the revenue generated by sale and distribution of the company's services and products.

Accordingly, Swanson is vicariously liable for copyright infringement. *See, e.g., Broad. Music, Inc. v. Tex Border Mgmt.*, 11 F. Supp. 3d 689, 693-94 (N.D. Tex. 2014).

19. Plaintiff is informed and believes that the foregoing act of infringement was willful and intentional, in disregard of and with indifference to the rights of Plaintiff.
20. As a result of Defendants' infringement of Plaintiff's copyrights and exclusive rights under copyright, Plaintiff is entitled to actual damages and Defendants' attributable profits pursuant to 17 U.S.C. § 504(b) for Defendants' infringement of the Copyrighted Photograph.

COUNT II: REMOVAL AND ALTERATION OF INTEGRITY OF COPYRIGHT
MANAGEMENT INFORMATION PURSUANT TO 17 U.S.C. § 1202

21. Plaintiff is informed and believes that Defendants, without the permission or consent of Plaintiff, knowingly and with the intent to conceal infringement, intentionally removed the copyright management information from Plaintiff's Copyrighted Photograph before displaying Copyrighted Photograph on Defendants' public website, www.darkstarrecords.com. In doing so, Defendants violated 17 U.S.C. § 1202(a)(1) and (b)(1).
22. As a result of Defendants' actions, Plaintiff is entitled to actual damages or statutory damages pursuant to 17 U.S.C. § 1203(c). Plaintiff is further entitled to their attorneys' fees and costs pursuant to 17 U.S.C. § 1203(b)(5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- A. Declaring that Defendants' unauthorized conduct violates Plaintiff's rights under the Federal Copyright Act;
- B. Immediately and permanently enjoining Defendants, its officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from copying and republishing Plaintiff's Copyrighted Photograph without consent or otherwise infringing Plaintiff's copyright or other rights in any manner;
- C. Ordering Defendants to account to Plaintiff for all gains, profits, and advantages derived by Defendants by their infringement of Plaintiff's copyright or such damages as are proper, and since Defendants intentionally infringed Plaintiff's copyright, for the maximum allowable statutory damages for each violation;
- D. Awarding Plaintiff actual damages for Defendants' copyright infringement pursuant to 17 U.S.C. § 504 in an amount to be determined at trial;
- E. Awarding Plaintiff such other and further relief as is just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims for which there is a right to jury trial.

Dated: February 8, 2019

/s/ David C. Deal
David C. Deal (VA Bar No.: 86005)
The Law Office of David C. Deal, P.L.C.
P.O. Box 1042
Crozet, VA 22932
434-233-2727, Telephone
Counsel for Plaintiff

EXHIBIT 1



EXHIBIT 2

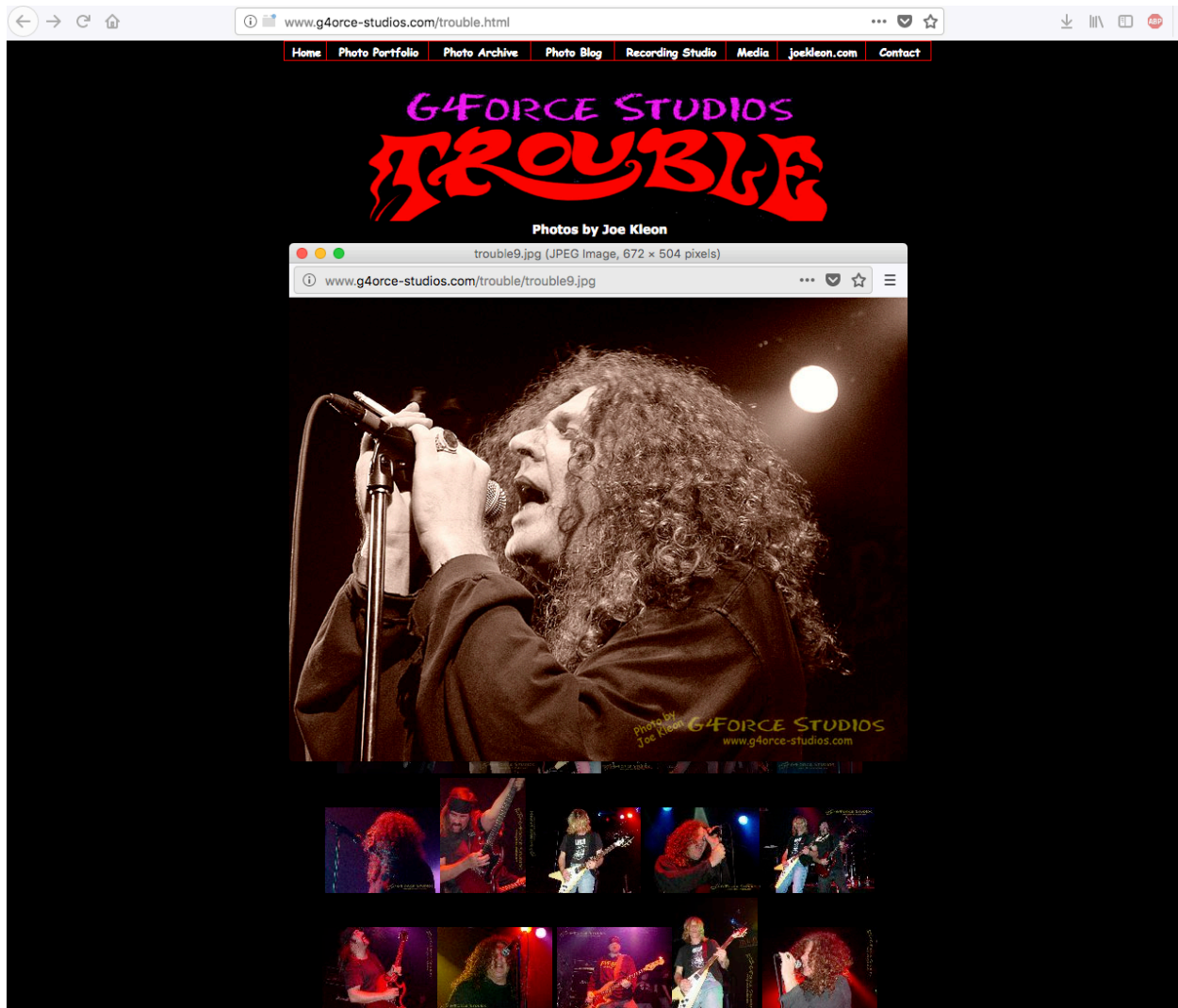


EXHIBIT 3



EXHIBIT 4

previous	next
Labeled View	
2005 Photos - Joe Kleon.	
<p>Type of Work: Visual Material</p> <p>Registration Number / Date: VA0002102816 / 2018-05-09</p> <p>Application Title: 2005 Photos - Joe Kleon</p> <p>Title: 2005 Photos - Joe Kleon. [Group registration of published photographs. 216 photographs. 2005-04-16 to 2005-08-06]</p> <p>Description: 216 photographs : Electronic file (eService)</p> <p>Copyright Claimant: Joe Kleon, 1968- . Address: 9200 West Moreland Rd., Parma, OH, 44129, United States.</p> <p>Date of Creation: 2005</p> <p>Publication Date Range: 2005-04-16 to 2005-08-06</p> <p>Nation of First Publication: United States</p> <p>Authorship on Application: Joe Kleon, 1968- ; Domicile: United States; Citizenship: United States. Authorship: photographs.</p> <p>Rights and Permissions: Joe Kleon, 9200 West Moreland Rd., Parma, OH, 44129, United States, (216) 213-9469, joekleon@yahoo.com</p> <p>Copyright Note: Regarding title information: Deposit contains complete list of titles that correspond to the individual photographs included in this group.</p> <p>Regarding group registration: A group of published photographs may be registered on one application with one filing fee only under limited circumstances. ALL of the following are required:</p> <p>1. All photographs (a) were created by the same author AND (b) are owned by the same copyright claimant AND (c) were published in the same calendar year AND 2. The group contains 750 photographs or less AND 3. A sequentially numbered list of photographs containing the title, file name and month of publication for each photograph included in the group must be uploaded along with other required application materials. The list must be submitted in an approved document format such as .XLS or .PDF. The file name for the numbered list must contain the title of the group and the Case Number assigned to the application.</p> <p>Photographs: Published in April 2005 (111 photographs): amdogscars102, amdogscars103, amdogscars104, amdogscars105, amdogscars106, amdogscars107, amdogscars108, amdogscars109, amdogscars110, amdogscars111, amdogscars12, amdogscars13, amdogscars14, amdogscars15, amdogscars26, amdogscars27, amdogscars28, amdogscars29, amdogscars30, amdogscars31, amdogscars36, amdogscars37, amdogscars38, amdogscars39, amdogscars40, amdogscars41, amdogscars42, amdogscars43, amdogscars46, amdogscars47, amdogscars48, amdogscars49, amdogscars50, amdogscars51, amdogscars52, amdogscars53, amdogscars54, amdogscars20, amdogscars21, amdogscars22, amdogscars23, amdogscars24, amdogscars25, amdogscars32, amdogscars33, amdogscars34, amdogscars35, amdogscars44, amdogscars45, amdogscars55, amdogscars56, amdogscars57, amdogscars58, amdogscars59, amdogscars60, amdogscars61, amdogscars62, amdogscars63, amdogscars64, amdogscars65, amdogscars66, amdogscars67, amdogscars68, amdogscars69, amdogscars70, amdogscars71, amdogscars72, amdogscars73, amdogscars74, amdogscars75, amdogscars76, amdogscars77, amdogscars78, amdogscars79, amdogscars80, amdogscars81, amdogscars82, amdogscars83, amdogscars84, amdogscars17, amdogscars18, amdogscars19, amdogscars3, amdogscars4, amdogscars5, amdogscars6, amdogscars7, amdogscars11, amdogscars16, portfolio46, amdogscars115, amdogscars114, amdogscars113, amdogscars112, amdogscars85, amdogscars86, amdogscars87, amdogscars88, amdogscars89, amdogscars90, amdogscars91, amdogscars92, amdogscars93, amdogscars94, amdogscars95, amdogscars96, amdogscars97, amdogscars98, amdogscars99, amdogscars100, amdogscars101</p> <p>Published in May 2005 (53 photographs): portfolio50, deathangel5, deathangel6, deathangel7, deathangel8, deathangel9, deathangel10, deathangel11, deathangel12, deathangel13, deathangel1, deathangel2, deathangel3, deathangel4, deathangel14, deathangel15, deathangel16, deathangel17, deathangel18, Trouble26, Trouble27, Trouble28, Trouble29, Trouble30, Trouble31, Trouble32, Trouble33, Trouble34, Trouble35, trouble1, trouble2, trouble3, trouble4, trouble5, trouble6, trouble7, trouble8, trouble10, trouble11, Trouble47, trouble13, trouble14, trouble15, trouble16, trouble17, trouble18, trouble19, trouble20, trouble21, trouble22, trouble23, trouble24, trouble25</p> <p>Published in July 2005 (25 photographs): quiet19, quiet6, quiet7, quiet8, quiet9, quiet10, quiet11, quiet12, quiet13, quiet22, quiet21, quiet20, quiet5, quiet14, quiet15, quiet16, quiet23, quiet24, quiet18, quiet17, portfolio21, quiet1, quiet2, quiet3, quiet4</p> <p>Published in August 2005 (27 photographs): cs13, cs14, cs15, cs16, cs17, cs18, cs19, cs20, cs21, cs22, cs23, cs24, cs25, cs26, portfolio10, cs1, cs2, cs3, cs4, cs5, cs6, cs7, cs8, cs9, cs10, cs11, cs12</p> <p>Names: Kleon, Joe, 1968-</p>	
previous	next
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